Supreme Court, U.S.
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No. 92-950

(2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

23 WEST WASHINGTON STREET, INCORPORATED,

Petitioner,

v.

CITY OF HAGERSTOWN, MARYLAND,

Respondent.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

ROBERT E. KUCZYNSKI,
EDWARD L. KUCZYNSKI,
KUCZYNSKI & KUCZYNSKI,
55 North Jonathan Street,
Hagerstown, Maryland 21740,
(301) 797-9120.

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Counsel of Record,
DANIEL KARP,
VALERIE I. SHEALER,
ALLEN, JOHNSON, ALEXANDER & KARP,
Suite 840,
300 East Lombard Street,
Baltimore, Maryland 21202,
(410) 727-5000,
For Respondent.

THE DAILY RECORD COMPANY, 11 EAST SARATOGA STREET, BALTIMORE, MD 21202

49pp

QUESTION FOR REVIEW

WHETHER THERE IS A DISPUTE AS TO ANY MATERIAL FACT THAT THE AMENDMENTS TO THE CITY OF HAGERSTOWN ORDINANCE, WHICH REGULATE LOCATION OF ADULT BUSINESSES, ARE CONSTITUTIONAL AND THAT RESPONDENT IS ENTITLED TO JUDGMENT IN ITS FAVOR AS A MATTER LAW?

LIST OF PARTIES

Respondent agrees with Petitioner's designation of the parties.

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SUPREME COURT OF THE UNITED STATES

No. 92-950

October Term, 1992

23 WEST WASHINGTON STREET, Incorporated

PETITIONER,

v.

CITY OF HAGERSTOWN, MARYLAND

RESPONDENT

BRIEF IN OPPOSITION TO THE PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Respondent, City of Hagerstown, Maryland, submits this Brief in Opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

CITATION OF OPINIONS OF OTHER COURTS IN THIS CASE

The opinions of the courts below are set forth in the Appendix to Petitioner's Brief as follows: Magistrate Daniel E. Klein, Jr.'s Report and Recommendation - Petitioner's Apx. 3; Order Adopting Magistrate Judge's Recommendation After Considering Objections - Petitioner's Apx. 36; and Per Curiam Opinion of the United States Court of Appeals for the Fourth Circuit - Petitioner's Apx. at 42.

JURISDICTIONAL STATEMENT

Respondent agrees with Petitioner's statement of this Court's jurisdiction.

PERTINENT CONSTITUTIONAL PROVISIONS AND LOCAL ORDINANCES

The text of the First Amendment and Section 1 of the Fourteenth Amendment of the Constitution of the United States is set forth at Apx. 1.

The legislation at issue in this matter is part of the City of Hagerstown's Zoning Ordinance. Respondent has reproduced the enabling resolution which enacted the ordinance in question beginning at Apx. 2.[1]

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[1] Petitioner failed to include the entire resolution which amended the ordinance. Petitioner also failed to include the necessary amendment to the ordinance <u>after</u> it was enacted. This omission is critical because the ordinance as set forth by Petitioner is not only incorrect but it would effectively ban all adult business, which was not the intent of the ordinance. The documents which amended the ordinance after enactment are set forth beginning at Apx. 17 through Apx. 29.

STATEMENT OF THE CASE

In April 1987 the Coalition of Community Values proposed an amendment to the Hagerstown Zoning Ordinance to regulate the location of adult bookstores and adult movie theaters.[2] The amendments were modeled after an ordinance enacted in Detroit, Michigan which had previously passed constitutional muster before this Court. See Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976). The Hagerstown ordinance was the subject of multiple work sessions and hearings. The proponents of the amendment argued and submitted evidence in support of the ordinance that adult businesses had an

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[2] The facts as alleged by Respondent are supported by the record below. See Record - Paper 8 and the 46 attendant exhibits.

adverse impact upon the downtown Hagerstown area and were inconsistent with plans to improve the area. The City Planning Commission (the "Planning Commission") and the City Council of the City of Hagerstown (the "City" or "Hagerstown") reviewed summaries of studies conducted in other cities (including Austin, Texas, St. Paul, Minnesota, Minneapolis, Minnesota, Los Angeles, California, and Phoenix, Arizona) concerning the adverse impact of increased crime and decreased property values which resulted from adult businesses located in those communities. With regard to Hagerstown, evidence of an order was submitted which had enjoined Petitioner from selling a cocaine dilutant on the premises at issue here. Citizens, by written and

oral statements, complained about pornography while others complained about crime in the surrounding neighborhoods and dwindling real estate values. The City filed appropriate public hearing notices, and held public hearings. No objection was made by anyone to the proposed amendments.

The resolution with the amendments was approved by the Mayor and City Council on September 6, 1988. The City Zoning Ordinance forbids the use of land for "adult bookstores", "adult motion picture theaters" and "adult mini motion picture theaters" in areas zoned C-1 (Commercial Local), C-3 (Commercial Central) and C-4 (Regional Shopping Center). Adult business uses are permitted in C-2 (Commercial General) but cannot be located within 1000 feet

of a church, school, hospital, nursing home, park and other public multi-family dwellings. Further, all nonconforming uses were to be removed from their present location within two years from October 6, 1988.

On September 19, 1990 Petitioner filed a Complaint for injunctive relief in the United States District Court for the District of Maryland alleging that the ordinance violated its First and Fourteenth Amendment Rights. The City answered and subsequently filed a motion for summary judgment with an accompanying memorandum of law. After Petitioner's response, the motion for summary judgment on the matter was referred to Magistrate Klein. Magistrate Klein recommended summary judgment be entered once the

typographical error (the inclusion of C-2 zones in the ban - see Apx. at 4, 12, 16-24, see also Petitioner's Apx. at 9 n.3) was corrected. The Magistrate further found that the ordinance, because it regulated the location of adult bookstores, was not content-based and was a valid time, place and matter restriction on activities protected the First Amendment. Although Plaintiff excepted to the Magistrate's recommendation, the district court entered summary judgment in favor of the City on November 5, 1991. The United States Court of Appeals for the Fourth Circuit affirmed, per curiam, on August 4, 1992.

SUMMARY OF ARGUMENT

The United States District Court for the District of Maryland properly

entered summary judgment in favor of Hagerstown. The amendments to the zoning ordinance -- which regulate location of adult businesses but not their content -- are valid time, place, manner restrictions upon speech and conduct consonant with rights guaranteed under the First and Fourteenth Amendments of the Constitution.

ARGUMENT

In accordance with precedent, the constitutionality of the amendments made to the City's Zoning Ordinance may be determined by application of standards by which government may regulate conduct and speech in United States v. O'Brien, 391 U.S. 367 (1968), and the holdings in American Mini Theaters, supra, and City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986). Petitioner argues

that enactment of what appears to be a valid time, place and manner restriction, is in effect a method of censoring the two adult businesses located in downtown Hagerstown.[3] Petitioner also argues that the ordinance is unduly restrictive and does not offer reasonable alternative avenues of expression. The arguments are not grounded in fact and ignore the detailed legislative record contained below.[4]

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[3] Petitioner suggests as an additional argument that the Court should hear this case because of a conflict with decisions issued by the Fifth, Seventh and Tenth Circuits. However, Petitioner has not bothered to cite the allegedly conflicting cases. As a result, this argument should not even be considered.

[4] Petitioner is correct that the purpose of the ordinance is not expressly set forth in the preamble. Nevertheless, this type of statement is not required to survive attack under the First Amendment. Barnes v. Glen Theater, Inc., 111 S.Ct. 2456 (1991).

The Court has stated:

> Government may impose reasonable restrictions on the time, place, or manner of protected speech provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve as a significant governmental interest, and they leave open ample alternative channels for communication of the information'...
>
> * * *
>
> [a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messengers but not others. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). (Citations omitted.)

The ordinance, as amended, is not a content-based regulation. Although the two adult businesses in the City are impacted by the legislation they are clearly not prohibited from exercising

their First Amendment rights.

This Court, in American Mini Theaters, supra, upheld a zoning ordinance which prohibited location of an adult movie theater within 1000 feet of any other two regulated uses, including adult entertainment centers, liquor stores and hotels, or within 500 feet of a residential area. 427 U.S. at 52. The Court found that Detroit's efforts to prohibit the concentration of adult oriented uses in a specified area, so as to prevent urban blight and crime, was a legitimate and substantial government interest. Further, the American Mini Theaters Court stated that cities must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems. 427 U.S. at 71. This Court explained that

because the ordinance did not altogether ban adult uses, and because its predominant purpose was a regulation of the negative secondary effects of adult theaters in surrounding communities, by regulating the content of the films, it was content-neutral and therefore constitutional "time, place and manner". Regulation. Id. at 71-73.

Similarly in Renton, this Court reviewed a theater's challenge to the city's zoning ordinance prohibiting adult motion picture theaters from locating within 1000 feet of any residential zone, single or multiple family dwelling, church, park, or school. 475 U.S. at 43. This Court again stated that "content neutral time, place and manner regulations are acceptable as long as they are designed

to serve a substantial government interest and do not unreasonably limit alternatives of communication." Renton, 475 U.S. at 47. The ordinance was viewed as a valid time, place and manner restriction enacted in response to the serious problems which resulted from sexually oriented businesses, rather than as an unconstitutional restriction of the content of speech.

The legislative investigation and preparation by the City Council and the Planning Commission were meticulous in detail and action. The City did not quietly railroad the passage of the adult business amendments. The record below is replete with evidence that the City Planning Commission and the City Council reviewed studies of other cities describing the adverse secondary impacts

of adult businesses upon communities. The fact that Hagerstown experienced the adverse impacts of increased crime and decreased property values were further attested to by various residents of Hagerstown in their written and oral statements to the Commission and to the City Council. Contrary to Petitioner's mistaken assertion, there was no constitutional requirement to conduct an empirical study of the adverse impacts of adult businesses in the City of Hagerstown itself. See Renton.

Petitioner finally argues that the courts below did not properly scrutinize the ordinance and did not determine whether the City used the least restrictive means to ameliorate the undesirable secondary effects of these businesses. Both courts below

recognized that Hagerstown did consider and reject two provisions by which the existing stores would be grandfathered in and allowed to continue operating or to allow specific use exemptions. These ideas were rejected after debate, discussion, and a reliance on precedent from this Court and individual testimony. Under the amendment as approved, the adult businesses were merely required to move to another area in the City within a two year period. This is not an undue restriction. Hart Bookstores, Inc. v. Edmisten, 612 F.2d 821, 830 (4th Cir. 1979), cert. denied, 447 U.S. 929 (1980).

The ordinance allows for reasonable alternative avenues of communication. See Renton, 475 U.S. at 53. Prior to the passage of the ordinance the City

undertook a study to determine the availability of potential sites for relocation of the adult businesses. At an August 9, 1988 work session the City determined that 40-50% of the C-2 City zoned area complied with the ordinance spacial restrictions so as to permit operation of adult businesses. In fact, the Court in Renton found that although only 5% of the entire land area therein would be available for adult business, it was sufficient access to survive constitutional challenge. 475 U.S. at 53. Hagerstown, as required by Renton, has enacted an ordinance which is a valid governmental response to the adverse effects created by adult businesses. Id. The end result is the City can rehabilitate its downtown area and Petitioner can relocate its business

and continue to practice its rights under the First Amendment.

CONCLUSION

Respondent respectfully requests this Honorable Court to deny the petition because the Hagerstown Zoning Ordinance, as amended, is constitutionally sound.

Respectfully submitted,

BY: D'Ana E. Johnson

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APPENDIX

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment
Section 1

All persons born or naturalized in United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RESOLUTION

WHEREAS; Article 66B of the Annotated Code of Maryland, and the Charter of the City of Hagerstown, empowers the Legislative Body of The City of Hagerstown to enact, enforce, and amend ZONING ORDINANCES for the purpose of protecting and promotion the health, safety and general welfare of the citizens of The City of Hagerstown; and

WHEREAS; The procedures prescribed for amending the Zoning Ordinance of The City of Hagerstown by Article 66B of the Annotated Code of Maryland, The Charter of the City of Hagerstown, and Chapter 68, Zoning, of the General Code of The City of Hagerstown, have been complied with; and

WHEREAS; The Mayor and Council of The City are desirous of amending Chapter 68, "ZONING," Part 1, "CITY ZONING," Article I, General, by amending Section 68-16. C-1 District (Commercial Local); Section 68.17. C-2 District (Commercial General); Section 68-18. C-3 District (Commercial Central); Section 68-19. C-4 District (Regional Shopping Center); Section 68-24. Nonconforming Uses; Section 68-38, Definitions; specific; and

WHEREAS; The Mayor and Council deem it advisable and to the best interests of the citizenry of The City of Hagerstown to amend and enact certain

revisions to said Ordinance; and

WHEREAS; After complying with all the aforementioned requirements, the Legislative Body for The City of Hagerstown has determined and finds as a matter of fact that certain revisions, amendments, and additions are necessary and desirable; and

BE IT FURTHER RESOLVED, ENACTED, AND ORDAINED that Chapter 68, "ZONING," Part 1, "CITY ZONING," Article 1, General, Section 68-16. C-1 District (Commercial Local); Section 68-17. C-2 District (Commercial General); Section 68-18. C-3 District (Commercial Central); Section 68-19. C-4 District (Regional Shopping Center); Section 68-24. Nonconforming Uses; Section 68-38, Definitions; specific; is amended to include:

Section 68-16. C-1 District (Commercial Local).

B. (Amended 12-4-78) Principal permitted uses, in accordance with Section 68-29; local retail or service shops, other than adult book stores, adult motion picture theaters and adult mini motion picture theaters, including but not limited to:

Section 68-17. C-2 District (Commercial General).

B. (Amended 12-4-78) Principal

permitted uses, in accordance with Section 68-29; including but not limited to:

(25) Adult book store, adult motion picture theater, adult mini motion picture theater, provided no such use may be permitted within one thousand (1000) feet of the boundary of property upon which exists any church, school, hospital, nursing home, park or any multiple-family dwellings owned by public or quasi public authority and intended primarily for use by senior citizens or other similar land uses for human care and needs.

(26) All uses permitted as principal permitted uses in a C-1 District.

Section 68-18. C-3 District (Commercial Central).

B. (Amended 12-4-78) Principal permitted uses, in accordance with Section 68-29; other than adult book stores, adult motion picture theaters and adult mini motion picture theaters, including but not limited to:

Section 68-19. C-4 District (Regional Shopping Center).

B. (Amended 12-4-78) Principal permitted uses, in accordance with Section 68-29; other than adult book stores, adult motion picture theaters and adult mini motion picture theaters, including but not limited to:

Section 68-24. Nonconforming Uses.

C. Except as hereinafter provided, nonconforming uses, as defined herein, shall be allowed to continue in existence in perpetuity, provided that said use does not cease for any reason whatsoever through a period of one (1) year. If any nonconforming use of land shall cease for any reason whatsoever through a period of one (1) year, said nonconforming use shall be deemed to have been abandoned, and the then applicable zoning provisions shall apply to the area in question. (Amended 12-4-78).

D. Adult book stores, adult motion picture theaters and adult mini motion picture theaters, situate in the zoning districts C1, C2, C-3 or C4 at the time this ordinance becomes effective shall be removed by two (2) years from the effective date of the ordinance.

Section 68-38. Definitions; specific.

As used in this ordinance, the following

terms shall have the meanings indicated:

ADULT BOOK STORE - Means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a segment or section devoted to the sale or display of such material.

ADULT MOTION PICTURE THEATER - Means an enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein.

ADULT MINI MOTION PICTURE THEATER - Means an enclosed building with a capacity for less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," for observation

by patrons therein.

SPECIFIED ANATOMICAL AREAS - Means:

A. Less than completely and opaquely covered:

(1) Human genitals, pubic region,

(2) Buttock, and

(3) Female breast below a point immediately above the top of the areola; and

B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES - Means:

A. Human genitals in a state of sexual stimulation or arousal;

B. Acts of human masturbation, sexual intercourse or sodomy;

C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that the remaining provisions of said Ordinance remain in full force and effect; and

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that the following amendment of Chapter 68, ZONING, be and is hereby

enacted; and

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED, that the effective date of this Ordinance shall be and is thirty (30) days from the date of its passage.

WITNESS:

MAYOR AND COUNCIL
OF THE CITY OF
HAGERSTOWN, MARYLAND

_____ By: _____

Georgiann N. Lucas,
City Clerk

Steven T. Sager,
Mayor

DATE: 8/16/88

DATE OF PASSAGE: _____

EFFECTIVE DATE: _____

Code

of the

City of Hagerstown

COUNTY OF WASHINGTON
STATE OF MARYLAND

SERIAL NO. 202

GENERAL CODE PUBLISHERS CORP.
72 Hinchey Road
Rochester, New York 14624
1990

district, any lot recorded among the land records of Washington County prior to the effective date of this chapter shall be deemed to meet the lot area and width requirements of the district.

B. Where at least sixty-six percent (66%) of all lots on both sides of the same street block as the subject lot have been developed, the front and side yard setbacks of the subject lot shall conform to the average established front and side yard setbacks, and the lot area and width requirements shall conform to the average lot area and width.

C. Where, by proper subdivision, lots are created from a lot recorded among the land records of Washington County prior to the effective date of this chapter and where each lot so created contains a residential dwelling that existed prior to the effective date of this chapter and where the purpose of the subdivision is for the transfer of ownership and not for building development, then the lots so created

shall be deemed to meet the lot area, width and setback requirements of the district.

D. This section shall not apply to zero-lot-line development. [Added 3-6-1984]

§68-24. Nonconforming uses.

A. In the event that there is a nonconforming use in existence on the date of adoption of this chapter, the owner or lessee of the premises in question may file with the Zoning Administrator a certification, in writing, of such form furnished by the Zoning Administrator and shall set forth fully the type of nonconforming use and all applicable information in reference to the structure location and general use.

B. Nothing in this chapter shall prevent the restoration of a nonconforming use, building or structure destroyed by fire, windstorm, explosion, act of public enemy, accident or for any other reason whatsoever or prevent the continuance of said nonconforming use, provided that the owners of the property in question shall file with the Zoning

Administrator a notice of intention to continue the nonconforming use within six (6)

months of said destruction or damage, and provided further that said restoration or construction is commenced within one (1) year of the date of said notice of intention to continue the nonconforming use in question. In the event that said notice is not filed, then the nonconforming use in question shall be deemed to have been abandoned.

C. Except as hereinafter provided, nonconforming uses, as defined herein, shall be allowed to continue in existence in perpetuity, provided that said use does not cease for any reason whatsoever through a period of one (1) year. If any nonconforming use of land shall cease for any reason whatsoever through a period of one (1) year, said nonconforming use shall be deemed to have been abandoned, and the then-applicable zoning provisions

shall apply to the area in question. [Amended 12-4-1978; 0-6-1988 by Ord. No. 1988-27]

D. Adult bookstores, adult motion-picture theaters and adult mini-motion-picture theaters situated in Zoning District C1, C2, C3 or C4 at the time this chapter become effective shall be removed by two (2) years from the effective date of the chapter. [Added 0-6-1988 by Ord. No. 1988-27]

E. Structural alterations of a building or structure of the use of a parcel, lot or tract of land which does not conform to the provisions of this chapter shall be allowed only if the building or structure to be altered or the parcel, lot or tract of land to be used is in conformance with the requirements of the zoning district in which it is located; however, upon application, the Board of Zoning Appeals may approve the structural alteration of a building or structure of the use of a parcel, lot or tract of land which is not in conformance with the provisions of the chapter.

The alteration or extension of the same nonconforming use is restricted to ann additional area not exceeding thirty-five percent (35%) of those existing buildings or structures and parcels devoted to a nonconforming use. Said alterations or extensions shall be construed to mean one (1) alteration or extension and shall not be cumulative.

F. Once changed to a conforming use, no building, structure or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use if the applicant shows that the proposed change will have less objectionable external effects than the existing nonconforming use with respect to traffic generation and congestion, including truck, passenger car and pedestrian traffic; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare or vibration; storage and waste disposal, and appearance. Such a changes is termed a

special exception, requiring the approval of the Board of Zoning Appeals.

§ 68-25. Supplemental district regulations.

A. Fences, walls and hedges. No fence or wall shall be constructed in front of the front building setback line. No fences, walls or hedges shall exceed six (6) feet in height. Exceptions may be allowed with approval of the Board of Zoning Appeals.

B. Special height regulations. The height limitations contained in the height regulations and yard requirements do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, poles, towers or other appurtenances not intended for human occupancy.

C. Structures to have access. Every dwelling hereafter erected or moved shall front a lot adjacent to a public street. For the purpose of this section, alleys do not constitute public streets.

D. Parking and storage off certain vehicles. Automotive

vehicles or trailers of any kind or type without current license plates shall not be parked or stored on any R District property other than in completely enclosed buildings.

E. Visibility at intersections. No fence, wall, gateway, ornamental structure, hedge, shrubbery and other fixtures, construction or planting shall exceed three (3) feet in height above the elevation of the nearest curb on a corner lot in all districts where front yards are required for a distance of twenty-five (25) feet along both the front and side lot lines, measured from the point of intersection of the intersecting lot lines.

CITY OF HAGERSTOWN
MARYLAND
21740

OFFICE OF THE CITY CLERK (301) 790-3200
City Hall, Room 200 Extension 112

October 23, 1991

Daniel Karp, Esquire
Allen, Johnson, Alexander and Karp
300 East Lombard Street
Suite 840
Baltimore, Maryland 21202

RE: 23 W. Washington Street v.
City of Hagerstown
Civil Action No.: MJG-90-2443

Dear Mr. Karp:

The Report and Recommendation of the United States Magistrate Judge Daniel E. Klein, Jr. granted the City's Motion for Summary Judgment but recommended that this recommendation not be accepted until the City cured the inconsistency in the ordinance.

Attached is a copy of Ordinance 91-14, approved by the Mayor and City Council on October 22, 1991, amending the Zoning Ordinance to remove the C-2 District from the amortization text. Also attached is a copy of the notice that will be published on October 28 and November 1, 1991, in the Herald Mail Newspapers in Hagerstown, in accordance with the provisions of the Charter of

the City of Hagerstown. Please notify my office if you need a certification of this publication, or any other information on this matter.

Sincerely,

CITY OF HAGERSTOWN

GeorgiAnn N. Lucas
City Clerk

Attachments: As Noted

pc: Robert E. Kuczynski, Esquire
Stephen M. Feller, City Administrator
Richard L. Kautz, Planning Department Manager

LEGAL NOTICE

AMENDMENT TO THE CODE OF THE CITY OF HAGERSTOWN, MARYLAND CHAPTER 68. ZONING, SECTION 68-24 NONCONFORMING USES

Notice is hereby given by the Mayor and Council of the City of Hagerstown, Maryland, a municipal corporation existing under and by virtue of the laws of the State of Maryland, that pursuant to and in accordance with the powers contained in the Annotated Code of Maryland, Article 66B, and the Charter of the City of Hagerstown, amended and adopted on April 6, 1983, the said Mayor and Council, as the legislative body for the City, at a duly constituted meeting of the Mayor and Council held on October 22, 1991, approved a revision to the Code of the City of Hagerstown, Chapter 68. Zoning, Section 68-24. Nonconforming Uses.

This Ordinance amendment specifically amends Section 68.24.D, to delete the C-2 district from the amortization text relating to adult bookstores. All other provisions of Chapter 68 shall remain in full force and effect.

A Public Hearing was held on October 22, 1991. The Mayor and Council enacted this Ordinance as an Emergency Ordinance on October 22, 1991, in accordance with the provisions of Section 208 of the Charter of the City

of Hagerstown. The effective date of said Ordinance is, therefore, October 22, 1991.

The entire Code of the City of Hagerstown in on file and available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, in the Office of the City Clerk, City Hall, Room 200, Hagerstown, Maryland, and is incorporated herein by reference.

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN,
MARYLAND
GeorgiAnn N. Lucas,
City Clerk

Robert E. Kuczynski
City Attorney

PUBLISH AS LEGAL NOTICE: Monday, October 28, 1991
Friday,
November, 1,
1991

BILL Account # CLRK0007903200

Send Bill and Certification to:

CLRK, City Hall
GeorgiAnn N. Lucas,
City Clerk
City Hall, Room 200
1 East Franklin Street
Hagerstown, Maryland

EMERGENCY ORDINANCE

CITY OF HAGERSTOWN, MARYLAND
ORDINANCE NO. 91-14

ZONING
SECTION 68-24 - NONCONFORMING USES

AN ORDINANCE TO AMEND the Code of the Hagerstown, Chapter 68 thereof entitled, Zoning, to delete the C-2 district from the amortization text relating the adult bookstores.

BE IT ORDAINED AND ENACTED by the Mayor and Council of the City of Hagerstown, as follows:

Section 1. Chapter 68 of the Code of the City of Hagerstown, Section 68-24, D, is hereby amended to read as follows:

Section 68-24. Nonconforming uses.

D. Adult book stores, adult motion pictures adult motion picture theatres, situate in the zoning districts C-1, C-3, C-4 at the time this ordinance becomes effective shall be removed by two (2) years from the effective date of the ordinance.

Section 2. All other provisions of Chapter 68 shall remain in full force and effect.

Section 3. In accordance with Section 208 of the Charter of the City of Hagerstown, this Ordinance is considered to be an emergency ordinance and, therefore, the effective date of this ordinance shall be October 22, 1991.

MAYOR AND COUNCIL OF THE CITY OF HAGERSTOWN, MARYLAND

WITNESS: By: _____
Steven T. Sager,
Mayor

_____
GeorgiAnn N. Lucas,
City Clerk

DATE OF INTRODUCTION: OCTOBER 22, 1991
DATE OF PASSAGE: OCTOBER 22, 1991
EFFECTIVE DATE: OCTOBER 22, 1991

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---
(301) 727-5000

FAX LINE (301) 727-0861

November 1, 1991

Honorable Marvin J. Garbis
Judge
United States District Court
for the District of Maryland
101 W. Lombard Street
Baltimore, Maryland 21202

RE: 21 West Washington Street, Inc. v. City of Hagerstown, Maryland
Case No.: MJG-90-244
My File No.: 310-341

Dear Judge Garbis:

The City of Hagerstown zoning ordinance at issues in this case (§68-24) has now been corrected in accordance with Footnote 3, page 4, of the August 21, 1991 Report and Recommendation of Magistrate Klein. A copy of Ordinance No. 91-14, effective October 22, 1991, is enclosed.

You may note that Ordinance No. 91-14 corrects §68-24D, although Magistrate

Klein indicated in his Footnote 3 that the typographical error was found in §68-24F. When the ordinance at issue was adopted in 1989, the paragraph at issue (concerning adult book stores) was Paragraph F. See Paper No. 8, Exhibit 46, at page 39, in the Court's file. However, when the ordinance was reprinted in 1990, the printer shifted the various paragraphs of §68-24 around, with the result that the language concerning adult book stores was moved from Paragraph F to Paragraph D. Please find enclosed, in that regard, a photocopy of the 1990 codification of the ordinance.

Consequently, new ordinance no. 91-14 amends what is now §68-24D, but what was, as originally enacted, §68-24F.

I regret the confusion. However, I believe that the City has now amended the ordinance at issue to comply with Magistrate Klein's Footnote No. 3. If Mr. Schulman disagrees, I am sure that he will tell the court promptly.

Sincerely yours,

ALLEN, JOHNSON, ALEXANDER
& KARP

By: Daniel Karp

DK/th
cc: Clerk, U.S. District Court for the
District of Maryland
Howard J. Schulman, Esquire
Robert E. Kuczynski, Esquire